

## **§ 10582.5. Dismissal of Inactive Lien Claims for Lack of Prosecution**

(a) Unless a lien claimant files a declaration of readiness to proceed: (1) within one year after the lien claimant is eligible to file a declaration of readiness to proceed under section 10250 because it is a “party” within the meaning of sections 10301(x)(3) and 10210(y); or (2) within one year after the entry of an order taking a lien conference or lien trial in which the lien claim is directly at issue off calendar, whichever is later, the lien claim may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party, including but not limited to the applicant or any defendant(s) in the case(s) to which the lien claim relates, or upon the Workers’ Compensation Appeals Board’s own motion for lack of prosecution. The filing of an amended lien claim shall not preclude such a dismissal.

(b) A lien claim may be dismissed for lack of prosecution after: (1) the issuance of a ten (10) day notice of intention to dismiss; or (2) the issuance of an order which provides that the lien claim is dismissed, but which further provides that written objection showing good cause to the contrary filed within ten (10) days shall void the order. If designated service of any such notice of intention or order is utilized, the Workers’ Compensation Appeals Board may direct the filing of the proof of service if a dispute arises. If an order dismissing a lien claim is issued following a 10-day notice of intention under subdivision (b)(1), that order shall be served only by the Workers’ Compensation Appeals Board, and not by designated service.

(c) A petition to dismiss a lien claim for lack of prosecution shall be accompanied by the following:

(1) a copy of a letter to the lien claimant *and*, if represented, to the lien claimant’s attorney or representative of record, that was mailed more than thirty (30) days before the filing of the petition to dismiss. This letter must state that it is the intention of the person(s) signing the letter to file a petition to dismiss the lien claim for lack of prosecution thirty (30) days after the date of that letter unless the lien claimant or its attorney or representative shows in writing some good reason for not dismissing the lien claim. A copy of the reply, if any, must be attached to the petition to dismiss.

(2) if the petition is based on the lien claimant’s alleged failure to file a declaration of readiness to proceed within one year after the underlying case was “resolved” within the meaning of sections 10301(x)(3) and 10210(y), the petition shall be accompanied by: (A) proof that a copy of an order approving a compromise and release agreement, a stipulated Findings and Award, an adjudicated Findings and Award, or other decision or order resolving the underlying case was served on the lien claimant; and (B) a declaration under penalty of perjury that a diligent search of the petitioner’s records establishes that lien claimant has not served it with a declaration of readiness.

(3) if the petition is based on the lien claimant’s alleged failure to file a declaration of readiness to proceed within one year after the injured employee or the dependent(s) of a deceased employee “choose(s) not to proceed with his, her, or their case” within the meaning of sections 10301(x)(3) and 10210(y), the petition shall be accompanied by: (A) a verified statement of the basis for the “choose(s) not to proceed” allegation (e.g., a verified allegation that the petitioner is unaware of any activity relating to the case by the injured employee or the dependent(s) of a deceased employee within a specified period of time); and (B) a declaration under penalty of perjury that a diligent search of the petitioner’s records establishes that lien claimant has not served it with a declaration of readiness.

(d) A copy of the petition to dismiss a lien claim for lack of prosecution shall be served on:

(1) the lien claimant *and*, if represented, the lien claimant's attorney or representative of record;

(2) any defendant(s) in any case(s) to which the lien claim pertains *or*, if represented, the attorney or representative of record of any such defendant(s); and

(3) the injured employee and, if represented, the injured employee's attorney or representative of record.

(e) This section shall become operative on January 1, 2012.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903, 4903.5, 4903.6, 5404.5, Labor Code.

**§ 10770. Filing and Service of Lien Claims Procedure.**

(a) Format of Lien Claims:

(1) Unless the lien claimant is excepted by parts (A) through (C) of section 10228(c)(5), any lien claimant under Labor Code sections 4903 or 4903.1 shall file its lien claim: (A) ~~in writing~~ utilizing an optical character recognition lien claim form approved by the Appeals Board that is completed using a computer or typewriter in compliance with section 10228(c); or (B) electronically utilizing an e-form ~~as~~ approved by the Administrative Director or the Court Administrator that is in substantially the same format and contains substantially the same information as the corresponding OCR form approved by the Appeals Board.

(2) Lien claimants ~~excepted by~~ set forth in parts (A) through (C) of section 10228(c)(5) may file a lien claim utilizing ~~a non-optical~~ an optical character recognition form ~~provided that it is in the same format and contains the same information as the corresponding OCR form approved by the Appeals Board~~ that is hand-printed in black ink in compliance with that section 10228(e).

(b) Filing of Lien Claims and Supporting Documentation:

(1) Only original (i.e., initial or opening) lien claims shall be filed. The original ~~All~~ lien claim ~~claims filed~~ shall be accompanied by: ~~(1) a full statement or itemized voucher supporting the lien and justifying the right to reimbursement; and (2) a proof of service.~~ For purposes of filing (as opposed to service), the original lien claim shall *not* be accompanied by a full statement or itemized voucher supporting the lien claim and justifying the right to reimbursement.

(2) The Workers' Compensation Appeals Board shall not accept for filing a lien claim that does not bear an adjudication case number previously assigned by the Workers' Compensation Appeals Board for the injury, unless the lien claimant is also filing an initial (case opening) application in accordance with section 10770.5.

(3) After an original lien claim has been filed, the lien claimant shall *not* file any amendment(s) to the lien claim or any documentation supporting the lien claim, except as provided in subdivisions (g) or (h) of section 10233 or as ordered by the Workers' Compensation Appeals Board.

(4) Any amended lien claim or any supporting documentation submitted to the Workers' Compensation Appeals Board in violation of this rule shall neither be accepted for filing nor deemed filed for any purpose, shall not be acknowledged or returned to the lien claimant, and may be destroyed at any time without notice.

(5) Where notice is given in writing to a defendant setting forth the nature and extent of any claim that is allowable as a lien, such notice shall not constitute the "filing" of a lien claim with the Workers' Compensation Appeals Board within the meaning of its rules of practice and procedure or within the meaning of Labor Code section 4903.1 et seq., including but not limited to section 4903.5.

(6) Under Labor Code section 4903.1(b), where a lien has been "served" on a party that party shall have no obligation to "file" that lien with the Workers' Compensation Appeals Board if: (A) after service, partial or full payment was tendered or made on the lien; and (B) no additional written demand for payment by the lien claimant is served on the party within three months after the partial or full payment was tendered or made.

(c) Service of Lien Claims and Supporting Documentation: All original and amended lien claims ~~liens~~ shall be served in accordance with subsections (1) and (2) below, ~~along together with the~~ a full statement or itemized voucher supporting the lien claim or amended lien claim and a proof of service. ~~shall be concurrently served as follows:~~

(1) the injured worker (or, if deceased, the worker's dependent(s)) shall be served, unless: (A) the worker or dependent is represented by an attorney or other agent of record, in which event service may be made solely upon the attorney or agent of record; or (B) the underlying case of the worker or dependent(s) has been resolved. For purposes of this subdivision, the underlying case will be deemed to have been resolved if:

(i) in a stipulated findings and award or in a compromise and release agreement, a defendant has agreed to hold the worker or dependent(s) harmless from the specific lien claim being filed and has agreed to pay, adjust, or litigate that lien claim;

(ii) a defendant had written notice of the lien claim ~~in accordance with Labor Code section 4904(a)~~ before the lien claim was filed and, in a stipulated findings and award or in a compromise and release agreement, that defendant has agreed to hold the worker or dependent harmless from all lien claims and has agreed to pay, adjust, or litigate all ~~liens~~ lien claims;

(iii) the application for adjudication of claim filed by the worker or the dependent(s) has been dismissed, and the lien claimant is filing or has filed a new application; or

(iv) the worker or the dependent(s) choose(s) not to proceed with his, her, or their case.

(2) any employer(s) or insurance carrier(s) that are parties to the case and, if represented, their attorney(s) or other agent(s) of record shall be served, ~~unless the employer(s) or insurance carrier(s) is/are represented by an attorney or other agent of record, in which event service may be made solely upon the attorney(s) or other agent(s) of record.~~

When serving an amended lien claim, the lien claimant shall indicate on the box set forth on the lien form that it is an "amended" lien claim.

~~Service of a lien on a party shall constitute notice to it of the existence of the lien.~~

~~(d) The Workers' Compensation Appeals Board shall not accept for filing a lien that does not bear an adjudication case number previously assigned by the Workers' Compensation Appeals Board for the injury, unless the lien claimant is also filing an initial (case opening) application in accordance with section 10770.5.~~

~~(e)~~ (d) The lien claimant shall provide the name, mailing address, and daytime telephone number of a person who will be available at the time of all conferences and trials, and who will have authority to resolve the lien claim on behalf of the lien claimant.

~~(f) (e) After a lien has been filed, the lien claimant shall file any amendments to the lien, together with a full statement or itemized voucher supporting the amendment, and it shall serve the amended lien in accordance with subsection (e). When filing an amended lien, the lien claimant shall indicate on the box set forth on the lien form that it is an "amended" lien. For purposes of this subdivision, an "amended" lien claim includes:~~  
(1) a lien claim that is for or includes additional services or charges for the same injured employee for the same date or dates of injury; (2) a lien claim that reflects a change in the amount of the lien claim based on payments made by the defendant; or (3) a lien claim that has been corrected for clerical or mathematical error. A subsequent lien claim that adds an additional adjudication case number or numbers is an "amended" lien claim with respect to the adjudication case number(s) originally listed.

~~(g) (f)~~ Within five business days after a lien claim has been resolved or withdrawn, the lien claimant shall notify the Workers' Compensation Appeals Board, the party defendant(s), and the worker or dependent(s) (except as provided in subsections (c)(1) and (c)(2) ~~subsection (e)~~).

~~(h) (g)~~ The ~~lien claimant shall be notified by the~~ Workers' Compensation Appeals Board shall either serve or, under sections 10500(a) and 10544, cause to be served notice on each lien claimant of each when any hearing is scheduled, whether or not the hearing directly involves the that lien claimant's lien claim.

~~(i) (h)~~ Inclusion of the injured employee's Social Security number on a lien claim form is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although a lien claimant is not required by law to include the employee's Social Security number, lien claimants are encouraged to do so because this will facilitate the processing and filing of the lien claim. Social Security numbers are used solely for identification and verification purposes in order to administer the workers' compensation system. A Social Security number will not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order.

(i) Any violation of the provisions of this section may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and Rule 10561.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903, 4903.1, 4903.4, 4903.5, 4903.6, ~~and~~ 4904, and 5813, Labor Code; Section 10561, title 8, California Code of Regulations.

### **§ 10770.1. Lien Conferences and Lien Trials.**

(a) A lien conference may be set (1) when a lien claimant or party files a declaration of readiness on an issue directly relating to a lien claim or (2) by the Workers' Compensation Appeals Board on its own motion. When a lien conference is set based on a declaration of readiness, the Workers' Compensation Appeals Board on its own motion and upon notice may include lien claims or lien issues not listed in the declaration of readiness.

Nothing in this section shall preclude the Workers' Compensation Appeals Board, in its discretion: from setting the case for a type of proceeding other than that requested in the declaration of readiness, in accordance with section 10420; from issuing a ten (10) day notice of intention to order payment of the lien claim, in full or in part, in accordance with section 10888; or from issuing a ten (10) day notice of intention to disallow the lien claim, in accordance with section 10888.

Consistent with section 10250(a), which allows only "parties" to file a declaration of readiness, nothing in this section shall permit a lien claimant to file a declaration of readiness unless it is a "party" as defined by sections 10210(y) and 10301(x).

(b) When a lien claimant or a party files a declaration of readiness on an issue directly relating to a lien claim, the lien claimant or party shall designate on the declaration of readiness form that it is requesting a "Lien Conference" and shall not designate any other kind of conference or hearing. If a status conference or any other type of hearing is requested or is set on the calendar, that status conference or other type of hearing shall be deemed a "Lien Conference" and shall be governed by any and all rules applying to a "Lien Conference."

(c) At a lien conference, the workers' compensation judge shall have the authority to resolve the lien claim(s) or lien issue(s) in dispute, including the authority to approve the settlement of any lien(s) and, if any lien claim(s) or lien issue(s) in dispute cannot be resolved, to frame the issues and stipulations in preparation for a lien trial.

(d) With respect to any lien claim(s) or lien issue(s) not fully resolved at the lien conference, the parties and lien claimant(s) shall prepare and file a pretrial conference statement noting the specific issues in dispute, listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the lien conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the lien conference.

(e) If any lien claim(s) or lien issue(s) in dispute cannot be resolved at the lien conference, the Workers' Compensation Appeals Board shall take one of the following actions:

(1) set the matter for trial;

(2) upon a showing of good cause, allow a one-time continuance of the lien conference to another lien conference, after which a trial shall be set; or

(3) upon a showing of good cause, order the matter off calendar.

(f) If a lien claimant fails to appear at the lien conference, the Workers' Compensation Appeals Board, in addition to taking action under subdivision (e) above, may also either: (1) dismiss the lien claim with or without prejudice after issuing a ten (10) day notice of intention to dismiss; or (2) issue an order which

provides that the lien claim is dismissed with or without prejudice, but which further provides that written objection showing good cause to the contrary filed within ten (10) days shall void the order. If designated service of any such notice of intention or order is utilized, the Workers' Compensation Appeals Board may direct the filing of the proof of service if a dispute arises. If an order dismissing a lien claim is issued following a 10-day notice of intention under subdivision (f)(1), that order shall be served only by the Workers' Compensation Appeals Board, and not by designated service.

(g) If no witnesses are listed in the pretrial conference statement or if, based on an offer of proof, no good cause is shown for each witness listed, the Workers' Compensation Appeals Board may order that any disputed lien claim(s) or lien issue(s) that remain unresolved after the lien conference shall be submitted for decision solely on the exhibits listed in the pretrial conference statement.

(h) Where a lien conference has been ordered off calendar, a lien claimant or party seeking to restore the lien claim(s) or lien issue(s) to the hearing calendar shall file a new declaration of readiness and shall designate on the declaration of readiness form that it is requesting a "Lien Conference." In addition, in the declarant's statement section of the declaration of readiness form, the declarant shall state under penalty of perjury that there has been no hearing on the lien claim(s) or lien issue(s) within the preceding 90 calendar days. However, nothing in this subdivision shall preclude the Workers' Compensation Appeals Board from (1) restoring the lien claim(s) or lien issue(s) to the hearing calendar on its own motion or (2) restoring the lien claim(s) or lien issue(s) to the hearing calendar less than 90 calendar days after the most recent hearing.

(i) Notwithstanding any provision of sections 10500(a) and 10222(b)(5) precluding the filing of proofs of service, if a defendant has been designated to serve a lien claimant with notice of a lien conference or lien trial under sections 10500(a) and 10544, the defendant shall bring a copy of its proof of service to the lien conference or lien trial and, if the lien claimant fails to appear, the defendant shall file that proof of service with the Workers' Compensation Appeals Board.

(j) Any violation of the provisions of this section may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and Rule 10561.

Note: Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 4903, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 5502, and 5502.5, Labor Code; Sections 351 and 352, Evidence Code; Sections 10210(v), 10250, 10250.1, 10301(u), 10364(a), 10561, 10629, and 10770-10772, title 8, California Code of Regulations.